

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re	: Chapter 11
	:
MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,	: Case No.: 09-50026 (MG)
f/k/a General Motors Corp., <i>et al.</i>	:
	:
Debtors.	: (Jointly Administered)
	:
-----X	

**DECLARATION OF GABRIEL K. GILLETT IN SUPPORT OF
THE OPENING BRIEF OF GUC TRUST ADMINISTRATOR
AND PARTICIPATING UNITHOLDERS ON THE APPLICABILITY
OF *PIONEER* AND TOLLING TO PLAINTIFFS' MOTIONS TO FILE LATE CLAIMS**

I, Gabriel K. Gillett, an attorney admitted to practice before this Court, hereby declare:

1. I am an associate at the law firm of Gibson, Dunn & Crutcher, LLP, counsel to Wilmington Trust Company, as trustee for and administrator of the Motors Liquidation Company GUC Trust (the "GUC Trust"). I submit this declaration in support of the Opening Brief of GUC Trust Administrator and Participating Unitholders on the Applicability of *Pioneer* and Tolling to Plaintiffs' Motions to File Late Claims.

2. Attached hereto as Exhibit 1 is a true and correct copy of excerpts of the transcript of the May 2, 2014 hearing in the above-captioned bankruptcy proceedings.

3. Attached hereto as Exhibit 2 is a true and correct copy of an email exchange between Gregory W. Fox and Lisa H. Rubin beginning on December 21, 2015.

4. Attached hereto as Exhibit 3 is a true and correct copy of an email exchange between Gregory W. Fox and Keith R. Martorana beginning on August 9, 2016.

5. Attached hereto as Exhibit 4 is a true and correct copy of excerpts of the transcript of the January 12, 2017 hearing in the above-captioned bankruptcy proceedings.

6. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: New York, New York
March 6, 2017

/s/ Gabriel K. Gillett
Gabriel K. Gillett

EXHIBIT 1

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

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4 In the Matter of:

5 Chapter 11

6 MOTORS LIQUIDATION COMPANY, Case No.: 09-50026 (REG)
7 et al, f/k/a General Motors (Jointly Administered)
8 Corp., et al.,

9

10 Debtors.

11 - - - - - x

12 STEVEN GROMAN, ROBIN DELUCO,
13 ELIZABETH Y. GRUMET, ABC
14 FLOORING, INC., MARCUS

15 SULLIVAN, KATELYN SAXSON, Adv. Pro. No.:

16 AMY C. CLINTON, AND ALLISON 14-01929 (REG)

17 C. CLINTON, on behalf of
18 themselves, and all other
19 similarly situated,

20 Plaintiffs,

21 v.

22 GENERAL MOTORS LLC,
23 Defendant.

24 - - - - - x

25

1 U.S. Bankruptcy Court
2 One Boling Green
3 New York, New York
4

5 May 2, 2014

6 9:46 AM
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9 B E F O R E :

10 HON ROBERT E. GERBER

11 U.S. BANKRUPTCY JUDGE
12

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14 Hearing re: Status Conference
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Transcribed by: Dawn South and Sheila Orms

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1 the things like selection of lead counsel, the things that
2 we can agree are purely administrative, and we should defer
3 consideration of the amended complaint issue until the next
4 status conference.

5 THE COURT: But matters of the character that the
6 MDL could appropriately determine in your view could include
7 whether the pretrial proceedings take place in say
8 California on the one hand or New York on the other?

9 MR. STEINBERG: For the MDL I think the MDL should
10 be able to select which forum is going to go forward on
11 generally the MDL action to the extent that the MDL action
12 will ever go forward.

13 THE COURT: Okay. Continue, please.

14 MR. STEINBERG: The -- Your Honor, with regard to
15 the -- your tentative ruling on the stipulated record and
16 that we don't do admissions, that is essentially what we
17 have been trying to urge on the plaintiffs.

18 One of the issues was that we had discussions
19 separately with one group versus another group and they had
20 differing views on certain issues. And even with the group
21 that had a larger issue what we were getting to some extent
22 was the lowest common denominator. When you have 15 people
23 having suggestions sometimes you get 15 suggestions because
24 no one really wants to whittle it down and they leave it up
25 to us to do it.

1 We urge to do a stipulated record under the theory
2 that it's too early to do admissions, it is a -- really just
3 a cost shifting issue as Your Honor had identified, and it
4 leads to a dialogue. If they -- if they propose that they
5 want us to agree to something instead of me answering as I
6 would answer an admission I'd be sitting there saying I
7 can't do that but I can do something different and then we
8 would have an iterative dialogue to be able to try to
9 present what the issues are and then I wouldn't have to try
10 to do the reflexive issue, which is that if you want
11 admissions then maybe I have admissions that I want to ask
12 of you. Did you know of the bankruptcy proceeding? Did you
13 know of a problem with your car? Those things and try to
14 identify those issues, which may be relevant to certain of
15 the issues whether it's -- that they may tangentially relate
16 to the fraud on the Court issue, which may be off the table
17 now, but -- so I said stay with the stipulation and if we
18 can't agree to it we'll have a status conference in June and
19 we'll tell the judge this is as far as we could get and we
20 couldn't get all the way there, and if we couldn't agree on
21 everything then you could propose what kind of limited
22 discovery you think you need to conclude those facts that
23 are necessary to determine the purely legal issue. We'll be
24 able to evaluate it. And then if we can't agree with that
25 we'd be before Your Honor on something specific and

1 concrete.

2 And the problem that we were having between now
3 and May 2nd is that there was a lot of general propositions
4 that were asserted and many times the devil is in the
5 detail, and you need to know when someone says it's purely
6 administrative it's not substantive you really need to know
7 what they are talking about. When people say we can agree
8 to some facts and it's not going to be big, it's going to be
9 narrowly tailored you need to know what someone means when
10 they say narrowly tailored, because when actually try to pin
11 it down it becomes a lot more difficult.

12 So what we were proposing -- and I think there was
13 a lot of receptivity on it from the other side -- was a walk
14 and then run, which is give us a chance to try to do an
15 exchange and we'll see how good we are, and give us a chance
16 if we can't fill in all the gaps to how to complete the
17 discovery and we'll see how good we are, and if we can't do
18 it then I know that you're going to bridge the gap for us
19 and then we'll both live with whatever Your Honor rules.
20 And we're only looking to defer that consideration where we
21 otherwise couldn't agree for like a six or seven-week
22 period.

23 And the reason why we think that time period going
24 a little longer versus shorter is better -- and I think Your
25 Honor eluded to that as one of your tentative rulings that

1 sometimes things take a little longer and these serious
2 issues -- is that until we know how they've organized -- and
3 it's really their job to organize, but it's our burden to
4 make sure that we're dealing with 2 groups of people,
5 4 groups of people, or 20 groups of people, because it
6 becomes harder to figure out briefing schedules, potential
7 discovery, stipulation of facts if we don't know who the
8 people are that we're dealing with you may need to have a
9 little more time until they get better organized to be able
10 to do that. That's why we actually suggest in our agenda
11 letter is just tell us if you formed a group. That has the
12 salutary effect of at least we know who we're dealing with
13 and Your Honor will know whether they actually formed the
14 group, and those who decide they want to be outliers well
15 then they will have to stand up and tell Your Honor why they
16 need to be an outlier and the liaison groups couldn't
17 properly be formed.

18 But that's all we were trying to say on that
19 issue, which is give them an opportunity to get themselves
20 organized and let us know how successful you were, and where
21 you were not fully successful just let us know because we --
22 we on our side of the table procedurally have to deal if
23 they're not fully organized and then ultimately Your Honor
24 will have that same issue about how things are being
25 presented to Your Honor.

1 With regard to -- so that's why we thought we
2 needed a little more time. And by the way, the dates that
3 we selected in our letter were given to us by one of the
4 plaintiff groups, and the other plaintiff group actually
5 said, while they shortened our dates, they also said in
6 their letter that they're flexible about the dates. So I
7 don't think ultimately at the end of the day we're going to
8 disagree about dates, about when we're going to be here.

9 I think the general proposition is that between
10 now and some time in mid to late June when we'll have
11 another status conference we're going to try to accomplish a
12 stipulated record for briefing the threshold issues and to
13 see whether there's any discovery that is it warranted or
14 not with regard to that stipulated record.

15 And I would suggest also, and this is off my
16 agenda letter, but picking off on the tentative ruling,
17 trying to identify during that period of time the other
18 issues which are not threshold issues, the other bankruptcy-
19 related issues that we'd ask Your Honor to consider, and
20 we'd be doing all of that presentation at the next status
21 conference. And at that next status conference, to the
22 extent that the defendants are not fully organized, that we
23 would try to -- and it wouldn't be me, but it would be Your
24 Honor and the plaintiffs -- try to figure out how they can,
25 you know, get to the end to themselves more fully organized.

1 The tentative that you had about the GUC Trust,
2 late-filed claims, excusable neglect, we actually think that
3 this is an issue that should be dealt with. It is not our
4 issue, but to the extent that they've raised or some of them
5 have raised a procedural due process issue relating to the
6 bar order, which was after the sale order had taken place
7 and they're saying that they don't have a remedy -- an
8 effective remedy against Old GM, well there is a GUC Trust,
9 there are a number of -- there's a number of values still
10 left in the GUC Trust. Whether they actually are a
11 creditor, where they actually have excusable neglect I'm not
12 trying to prejudge it, but we were urging that they
13 shouldn't just assume that there was nothing there when
14 there is potentially something there and they should be able
15 to and should be almost in fact required to at least explore
16 that as an alternative to try to get a recovery, if they're
17 entitled to a recovery. I wasn't trying to say that they
18 were or not.

19 As far as the suggestion of mediation, it is
20 always hard to say that you're against mediation. The only
21 thing that I would say, Your Honor, is that New GM has hired
22 Ken Feinberg, who is a very well known person who tries to
23 figure out how to deal with circumstances and to how to
24 adjust situations on a non-legal base, but to try to
25 negotiate a resolution.

1 like jerks on a going forward basis.

2 The second reason I brought it to Your Honor's
3 attention is, to the extent that people have historically
4 signed the pieces of paper that the jerks gave them to
5 review, I haven't seen anything in the record other than an
6 oral communication that said New GM will not hold those
7 releases or agreements to arbitrate against the plaintiffs,
8 I raise it now only because for all of our benefit, we'd
9 like to see something about this in writing at some point.

10 I brought it up in the context of Your Honor's
11 concern about presale conduct and post-sale conduct, and
12 Your Honor, the plaintiffs very much agree that to the
13 extent that one could readily distinguish between actions
14 that go to New GM's conduct, that they can't, as Mr.
15 Steinberg indicated, properly be the subject of the
16 injunction.

17 But the devil is also in the details on this one
18 because we're not --

19 THE COURT: Pause for a second. Mr. Steinberg,
20 I'm going to give you another chance to be heard, why don't
21 you sit down for now.

22 MR. WEISFELNER: In terms of what constitutes New
23 GM's actions versus Old GM's actions, you heard at least one
24 example of how it's difficult, and that is New GM does a
25 recall and could arguably be replacing the ignition switch,

1 not with a new ignition switch, but with an old ignition
2 switch, or that parties are concerned that, you know, they
3 went to their dealer, they got a new ignition switch, they
4 don't know now whether it was a recalled ignition switch or
5 an old switch.

6 But, Your Honor, and again, I just mention this,
7 not because I think it needs to be resolved, or because I
8 have any evidence to prove it's true, but a lot of what
9 we're reading suggests that calling this an ignition switch
10 defect is an impermissible narrowing of what the issues are.

11 The ignition switch may or may not have been the
12 cause of air bag failure to deploy. The fixing of the
13 ignition switch, given the electronic calibrations between
14 the switch and the air bags may or may not address the air
15 bag problem. I don't know the answer to any of this.

16 Other than to tell you again, when we parse out or
17 attempt to parse out actions against New GM for New GM
18 conduct, or things that New GM definitively agreed to assume
19 as part of the sale process, versus actions that could
20 arguably or do, in fact, implicate the injunction that's
21 part of the sale order is, for lack of a better term, easier
22 said than done.

23 Nevertheless, the plaintiffs as a whole do reserve
24 the right if this process gets bogged down or takes too
25 long, to say, you know what, maybe the quickest thing to do

1 is to spend the time and energy that hopefully we won't have
2 to, to parse through whatever's been filed, and to
3 demonstrate to Your Honor that the allegations that are
4 being made, the liability that's being ascribed, and the
5 damages sought to be obtained as they relate to New GM
6 conduct do not implicate Your Honor's injunction.

7 For now, however, we'd prefer not to get into all
8 of those potentially dicey issues, as to what does and what
9 doesn't constitute a direct claim against New GM that is
10 outside of the injunction, at least until the parties work
11 hard on trying to get to a position where the due process
12 issue gets teed up for Your Honor's consideration.

13 And if we can do that in an effective vehicle and
14 quickly, then all of the other noise that may be necessary
15 down the road could be avoided. Because whether it's
16 actions against New GM or actions that New GM contends
17 they're not liable for because of the injunction, if the
18 injunction is dissolved as to this group, because of lack of
19 fundamental due process, it doesn't matter.

20 So I'd prefer, we collectively would prefer to
21 deal with that issue as, when and if it does matter.

22 I'm going to skip over the lemon law issues,
23 because I don't think we have much difference of view with
24 regard to the answer that you got from Mr. Steinberg. I do
25 want to stress on your question number four, the inability

1 to get together.

2 The plaintiffs are together, and with the
3 exception of again one outlier on the issue of what ought to
4 be part of the threshold and what not be part of the
5 threshold, there's not a plaintiff group that we're aware of
6 that isn't prepared to have their interests in the first
7 instance, represented by one of the three of us, with
8 consultation with Ms. Cyganowski, subject, of course, their
9 ability to stand up and say, hey, they didn't present my
10 issue. But we have a commonality of position, a commonality
11 of interest, and a desire to work collectively through these
12 three lawyers.

13 I'm just trying to see if there was anything else.
14 You've heard our views with regard to an adversary
15 proceeding versus motion practice. I didn't touch on the
16 impact on Old GM and the GUC Trust. And I liked Your Honor
17 took comfort in the fact that Mr. Golden is here, as I do
18 take comfort any time Mr. Golden shows up anywhere.

19 Look, Your Honor, it's obvious, and you get it,
20 that one of the arguments that New GM may make is if these
21 individuals were damaged or deprived of due process, let's
22 not jump to the conclusion that the right remedy is to have
23 the injunction not apply to them.

24 Instead let's consider the alternative remedy of
25 having them all get shifted into the category of late filed

1 claims, judicially acknowledged late filed claims, will now,
2 as part of a bankruptcy process, go through a procedure for
3 determining what those claims might be worth individually or
4 on some class basis.

5 And when that process is all over, then we can let
6 the GUC Trust and its beneficiaries know that their expected
7 future dividends may have to be adjusted or wiped out in
8 order to allow these new beneficiaries of the trust to, in
9 effect, catch up on distributions that have already been
10 made, if in fact, that can be done as a matter of
11 practicality.

12 And I anticipate that holders of the units
13 including Mr. Golden's clients and others may very well have
14 an opinion about that.

15 Again, it seems to me that before we ever get near
16 that thorny issue, where lots of people are going to be
17 impacted, and it may not be practical, if we resolve the
18 threshold issue of whether, because of lack of due process
19 the injunction ought not to apply, then we never get into
20 this issue. Unless someone were to argue that
21 notwithstanding the denial of due process the right remedy
22 is not let the injunction dissolve, but the right remedy is
23 somehow to treat these people as if they had late filed
24 claims, and will now just dilute all of the other
25 beneficiaries of the GUC Trust.

1 MR. MARTORANA: Your Honor, I stand because you
2 had suggested at the outset of this hearing the possibility
3 that issues related to the GUC Trust and claims against the
4 GUC Trust might be better addressed as a threshold issue to
5 start.

6 Based upon what I'm hearing today, it sounds like
7 there's a consensus among the parties here at least, that
8 this is something that should not be addressed as a
9 threshold issue.

10 THE COURT: Well, that depends on who you're
11 including within that consensus, Mr. Martorana.

12 MR. MARTORANA: I meant just these parties over
13 here. Don't -- you would like to have it addressed to the
14 threshold issue?

15 UNIDENTIFIED: I'll address it later.

16 MR. MARTORANA: Okay. All right. Then I guess
17 there is no consensus on that, but I will tell you that from
18 our perspective, we believe that it should not be addressed
19 as a threshold issue.

20 We do believe that first off it will require at
21 least some discovery, probably substantial discovery. We
22 also believe, you know, particularly because as it relates
23 to issues of excusable neglect, which are fact sensitive.

24 We also believe that it's not dispositive of -- as
25 Mr. Weisfelner said the -- you know, the fundamental issue

1 here which is whether or not claims can be asserted against
2 New GM.

3 Moving off it being a threshold issue, we also
4 don't believe that this is an issue frankly that needs to be
5 addressed at any point during this hearing -- during this
6 proceeding.

7 No claimants, none of the plaintiffs, no claimants
8 or potential claimants had raised this as a possibility. No
9 one has filed a motion to lift the bar date. The only
10 person that has raised it has been New GM, based upon, you
11 know, some statements of fact in some pleadings. But the
12 only person that has actually moved forward with it is New
13 GM, and frankly, you know, it's our view that this is
14 essentially a way to deflect liability away, and you know,
15 the attention away from New GM and put it on to a third
16 party.

17 To the extent that Your Honor is inclined to rule
18 against us and have it either be dealt with as a threshold
19 issue or as a -- I guess, a subsequent issue, we would
20 request to participate in any of the discovery that does
21 transpire. And then to the extent that there are any claims
22 against New GM to be resolved, we would also ask to
23 participate in any mediation.

24 THE COURT: Okay. Thank you.

25 MR. FLAXER: Thank you.

EXHIBIT 2

[REDACTED]

[REDACTED]

From: Fox, Gregory W. [<mailto:GFox@goodwinprocter.com>]
Sent: Monday, January 4, 2016 11:03 AM
To: Rubin, Lisa H. <LRubin@gibsondunn.com>
Cc: Williams, Matt J. <MJWilliams@gibsondunn.com>; Daniel H. Golden (dgolden@akingump.com)
<dgolden@akingump.com>; dnewman@akingump.com; Weintraub, William P <WWeintraub@goodwinprocter.com>
Subject: RE: Subject to FRE 408 and state law equivalents

Thanks Lisa

From: Rubin, Lisa H. [<mailto:LRubin@gibsondunn.com>]
Sent: Monday, January 04, 2016 10:37 AM
To: Fox, Gregory W.
Cc: Williams, Matt J.; Daniel H. Golden (dgolden@akingump.com); dnewman@akingump.com; Weintraub, William P
Subject: RE: Subject to FRE 408 and state law equivalents

Thanks, Greg. The Participating Unitholders and GUC Trust agree to your proposal, as set forth below in your December 21 e-mail.

Best regards,

Lisa

Lisa H. Rubin
Of Counsel

GIBSON DUNN

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From: Fox, Gregory W. [<mailto:GFox@goodwinprocter.com>]
Sent: Monday, January 04, 2016 10:19 AM
To: Rubin, Lisa H.
Cc: Williams, Matt J.; Daniel H. Golden (dgolden@akingump.com); dnewman@akingump.com; Weintraub, William P
Subject: RE: Subject to FRE 408 and state law equivalents

Lisa,

I hope you had a pleasant holidays. Checking in on the below.

Thanks,

Greg

From: Fox, Gregory W.
Sent: Wednesday, December 23, 2015 5:52 PM
To: 'Rubin, Lisa H.'
Cc: Williams, Matt J.; Daniel H. Golden (dgolden@akingump.com); dnewman@akingump.com
Subject: RE: Subject to FRE 408 and state law equivalents

Thanks. Have a good holiday weekend.

Greg

From: Rubin, Lisa H. [<mailto:LRubin@gibsondunn.com>]
Sent: Wednesday, December 23, 2015 5:44 PM
To: Fox, Gregory W.
Cc: Williams, Matt J.; Daniel H. Golden (dgolden@akingump.com); dnewman@akingump.com
Subject: RE: Subject to FRE 408 and state law equivalents

Greg,

We appreciate the e-mail you sent us Monday. We are discussing your proposal with our client and the Unitholders' counsel, but given the holiday, we do not anticipate being able to respond until next week. Thanks again for memorializing the proposal in writing.

We will try to get back to you as soon as we can.

Many thanks and all best,

Lisa

From: Fox, Gregory W. <GFox@goodwinprocter.com>
Sent: Monday, December 21, 2015 9:49 PM
To: Rubin, Lisa H.
Cc: Weintraub, William P; dgolden@akingump.com
Subject: Subject to FRE 408 and state law equivalents

Lisa,

As we have discussed in connection with the General Motors case, Goodwin Procter has received proofs of claim of approximately 200 pre-sale accident plaintiffs represented by Mr. Hilliard's firm (the "Pre-Sale Accident Plaintiffs"). Rather than expending resources litigating a motion to allow these prepetition claims notwithstanding the passage of the bar date, we propose deferring such motion practice until after the Second Circuit rules on the pending

appeal of Judge Gerber's April 15, 2015 equitable mootness ruling (the "Equitable Mootness Ruling"). If the Second Circuit affirms the Equitable Mootness Ruling, the prepetition claims of these Pre-Sale Accident Plaintiffs against the GUC trust would be moot and no motion would be necessary. If the Second Circuit reverses the Equitable Mootness Ruling, the Pre-Sale Accident Plaintiffs would promptly file a motion seeking to allow these claims against the GUC trust notwithstanding the passage of the bar date.

We propose the following agreement among the Pre-Sale Accident Plaintiffs, the GUC Trust, and the Unitholders represented by Akin Gump:

- (i) The Pre-Sale Accident Plaintiffs will not file or seek allowance of their proofs of claim until five business days after a ruling by the Second Circuit reversing Equitable Mootness Ruling.
- (ii) In the event that the Second Circuit reverses the Equitable Mootness Ruling, the GUC trust and the Unitholders represented by Akin Gump will not subsequently argue to any court or tribunal that the Pre-Sale Accident Plaintiffs' rights to allowed claims against the GUC Trust were impacted by the Pre-Sale Accident Plaintiffs' failure to file and seek allowance of their proofs of claim during the period between the date of this email through the date that is five business days after the Second Circuit's reverses Equitable Mootness Ruling. All parties' rights and arguments with respect to the period prior to the date of this email would be fully reserved; and
- (iii) For the period between the date of this email through the date the Second Circuit issues a decision reversing Equitable Mootness Ruling, the Pre-Sale Accident Plaintiffs will not to take any action to stay distributions by the GUC trust to its beneficiaries.

If you are in agreement with this proposal, please send a confirmatory email on behalf of both the GUC Trust and the Unitholders represented by Akin Gump. If you believe the foregoing does not accurately reflect our agreement, please send proposed language for our consideration.

Best regards,

Greg

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EXHIBIT 3

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Fox, Gregory W. [<mailto:GFox@goodwinlaw.com>]
Sent: Tuesday, August 9, 2016 1:03 PM
To: Martorana, Keith R. <KMartorana@gibsondunn.com>
Cc: Williams, Matt J. <MJWilliams@gibsondunn.com>; Wu, Aric <AWu@gibsondunn.com>; Rubin, Lisa H. <LRubin@gibsondunn.com>; Weintraub, William P <WWeintraub@goodwinlaw.com>
Subject: RE: GM

Thanks Keith

Gregory W. Fox



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From: Martorana, Keith R. [<mailto:KMartorana@gibsondunn.com>]
Sent: Tuesday, August 09, 2016 12:47 PM

To: Fox, Gregory W.
Cc: Williams, Matt J.; Wu, Aric; Rubin, Lisa H.
Subject: RE: GM

Greg – this is confirmed for the plaintiffs covered by our prior stipulation.

Keith Martorana

GIBSON DUNN

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From: Fox, Gregory W. [<mailto:GFox@goodwinlaw.com>]
Sent: Tuesday, August 09, 2016 11:55 AM
To: Martorana, Keith R.
Subject: GM

Keith,

As we discussed, please allow this email to confirm our discussion this morning that the existing tolling does not require the Pre-Closing Accident Plaintiffs to file their motion for leave to assert late proofs of claim any earlier than the Economic Loss Plaintiffs need to file their motion for leave to assert late claims.

Thanks,

Greg

Gregory W. Fox



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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 09-50026-mg
. Chapter 11
.
MOTORS LIQUIDATION COMPANY, . (Jointly administered)
et al., f/k/a GENERAL .
MOTORS CORP., et al, . One Bowling Green
. New York, NY 10004
Debtors. .
. Thursday, January 12, 2017
. 9:30 a.m.
.

TRANSCRIPT OF (CC: DOC# 13802, 13813, 13819, 13820, 13822)
STATUS CONFERENCE REGARDING LATE CLAIMS MOTION; (CC: DOC. NO.
13806) STATUS CONFERENCE RE: MOTION FOR AN ORDER GRANTING
AUTHORITY TO FILE LATE CLASS PROOFS OF CLAIM FILED BY EDWARD S.
WEISFELNER ON BEHALF OF DESIGNATED COUNSEL FOR THE IGNITION
SWITCH PLAINTIFFS & CERTAIN NON-IGNITION SWITCH PLAINTIFFS;
(CC: DOC# 13807) OMNIBUS MOTION TO ALLOW CLAIMS, FILE LATE
PROOFS OF CLAIM FOR PERSONAL INJURIES AND WRONGFUL DEATHS

**BEFORE THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY COURT JUDGE**

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1 MR. WEINTRAUB: -- of why we didn't file the claims
2 any sooner than now. When the time came to file the claims, we
3 were ready. We didn't wait until the time came to file the
4 claims and then start trying to accumulate them and say, Judge,
5 we need another six months. We were proactive.

6 So for the historical reasons of it had -- would have
7 been a futile act to try to get a late claim determination
8 before the threshold issues were determined and because the
9 threshold issues hadn't been determined and because of the
10 tolling of the bankruptcy court's orders, we didn't think it
11 was ripe until now, which is a long way of saying, this is not
12 a Pioneer case, and we don't think that 25 interrogatories to
13 175 people would be appropriate. We'd like to address the
14 scope of discovery, if any, in separate briefings.

15 THE COURT: Well, I -- it's fine for you to say you
16 don't think it's a Pioneer issue, but I don't know what Mr.
17 Steinberg's response or the GUC Trust's response is going to be
18 on whether it's a Pioneer issue. I mean, with all due respect,
19 you can't unilaterally decide that, you know, as far as I'm
20 concerned, the issues aren't Pioneer and therefore there
21 shouldn't be any discovery related to it.

22 MR. WEINTRAUB: No. And I'm not deciding that, Your
23 Honor. My point was I want -- I'd like you to decide that, and
24 I'd like an opportunity --

25 THE COURT: I understand.



1 MR. WEINTRAUB: -- to brief it.

2 THE COURT: Yes. I'll express my concern. Here we
3 are in January of 2017. I agree -- let's assume I agree to
4 stay for 90 days, okay. It's not -- you know, I've got plenty
5 to do. So that's not an issue. I've got another GM trial
6 start -- Motors Liquidation trial starting April 24th. You
7 know, I've got closing argument in Mr. Weisfelner's Lyondell
8 case on February 2nd. I'm -- all I'm doing is litigation these
9 days.

10 Okay. I'm really busy. I can see that, okay, we
11 stay for 90 days, and then you come back in and maybe you've
12 agreed on how to go forward, maybe you haven't agreed how to go
13 forward. I see 2017 kind of going by and this not getting
14 resolved. And to me, that's unhelpful, the lack of clarity
15 about it. I understand your position very well. You don't
16 believe the Pioneer factors apply. The Second Circuit decided
17 the due process violation. Judge Gerber decided that it was a
18 due process violation. Okay.

19 I'm concerned about, you know, somewhere near the end
20 of this year, proceedings start to go forward as to whether,
21 you know, are the late claims going to be permitted, are there
22 going to be class claims, and we're going to be in 2018, and
23 this uncertainty is going to hang over the -- all of the
24 creditors who are currently entitled to distributions from the
25 GUC Trust, you know, unless there's an agreement between the



1 parties that there won't be any disgorgement. People have to
2 worry about, I get a dollar today, I may have to give it back
3 again. I don't like that uncertainty continuing.

4 Someone, Mr. Steinberg or somebody else is going to
5 tell me -- and this is what I -- if either the GUC Trust or New
6 GM, which obviously has a big economic interest in preventing
7 late claims if it's going to call on the -- if it's going to
8 trigger the accordion -- if their position is the Pioneer
9 factors apply and we need discovery in order to do that and
10 that discovery is different than what the discovery in the MDL
11 is going to be, my reaction is, okay, I understand people will
12 be busy with the discovery that Judge Furman is permitting, but
13 let's move forward, let's get the, you know, craft in order
14 that permits discovery that is not -- that does not overlap
15 with the discovery that's going on in the MDL because I don't
16 want to find out six, nine months from now that, oh, that
17 discovery was different, we're talking about different
18 discovery, all right, let's start it now. And my reaction is
19 let's start it now if that's true.

20 I'm mindful and sensitive, and I don't want to do
21 anything to interfere with the progress of the MDL or the
22 discovery that's happening in the MDL. I don't know on what
23 issues the putative class representatives here are being
24 deposed in the MDL. Well, let me stop there. Go ahead, Mr.
25 Weintraub.

1 MR. WEINTRAUB: Well, what I was going to say, Your
2 Honor, is not to break ranks with Mr. Steinberg and Mr.
3 Weisfelner. I stand in solidarity with them on the 90 days,
4 but my issue is the propriety of discovery of my 175 clients
5 and burdening them with 25, I believe, unnecessary
6 interrogatories.

7 THE COURT: Have they given you the draft of the --
8 have they given you the interrogatories?

9 MR. WEINTRAUB: No, Your Honor. And so my concern
10 and why I speak separately from the others is I don't want to
11 leave this hearing being told, we're in discovery on the
12 Pioneer issues. I would like an opportunity to brief that.

13 THE COURT: I understand your position.

14 MR. WEINTRAUB: Thank you, Your Honor.

15 THE COURT: Thank you, Mr. Weintraub.

16 Mr. Weisfelner, you're on.

17 MR. WEISFELNER: Your Honor, I just thought it was
18 important to supplement this. As Your Honor knows, the
19 scheduling order that Judge Gerber entered, and I think it was
20 back in, I'm going to guess, May of 2014, has a provision in it
21 that ordered that the GUC Trust agrees that it shall not assert
22 a timeliness objection to any claims that we may attempt to
23 assert against Old GM during what was defined as the interval.
24 The interval was from the date of the order until a certain
25 period of time after a final order. There's been no final



1 order with regard to the original threshold issues because of
2 the pendency of cert. So if you think about it, in terms of
3 discovery, and let's assume Pioneer --

4 THE COURT: Well, I think -- rather than make it
5 totally hypothetical, I'd like to hear from counsel for the GUC
6 Trust and from New GM, and I want to find out on what basis
7 they contemplate opposing the filing of late claims. And let's
8 see, if Pioneer is not an issue, well, then that -- we'll put
9 it aside.

10 MR. WEISFELNER: And --

11 THE COURT: Go ahead, Mr. Weisfelner.

12 MR. WEISFELNER: -- as Your Honor gets prepared to
13 hear from the parties, understand that the order that Judge
14 Gerber entered that I just recited was directed to the GUC
15 Trust. Now, when you think about it, from our perspective back
16 then, the only party that had standing to oppose late claims
17 was the GUC Trust. For some reason, New GM isn't a party to --
18 they were a party to the proceeding.

19 They're not mentioned in the decretal paragraph
20 because again, the job of defending against late claims falls
21 to the GUC Trust, notwithstanding the fact that New GM is the
22 economic party in interest, but they agreed up front to the
23 accordion feature and they allowed the GUC Trust to be the
24 defender of the accordion feature. So for New GM now to take a
25 different position on the tolling and the --



1 THE COURT: Yes, but he didn't decide this. So let's
2 assume somebody's in an accident because the engine just shut
3 off and the power steering didn't work and they hit an
4 abutment, okay. Aren't those facts and circumstances about the
5 accident relevant to the issue of whether any of the Pioneer
6 factors apply to them? They know -- let's hypothetically --
7 you know, one of your 175 clients knows that, ah, just out of
8 the blue, the ignition turned off, the power steering didn't
9 work, the power brakes didn't work, I lost control of the car,
10 and I had an accident. Isn't that relevant to the issue of
11 whether to permit a late-filed claim on behalf of that person?

12 MR. WEINTRAUB: If the Pioneer factors were
13 applicable, I would concede that that would be relevant. We
14 don't believe that Pioneer is applicable because Pioneer arises
15 in the context of someone who got constitutionally sufficient
16 notice and then has to come up with a reason why,
17 notwithstanding the constitutionally sufficient notice, they
18 didn't file a claim. That --

19 THE COURT: All right. Here's -- thank you, Mr.
20 Weintraub. Is there another point you wanted to make?

21 MR. WEINTRAUB: Yes. Yes, Your Honor. I think a lot
22 of what I was going to say was said by Mr. Weisfelner, but the
23 point that I did want to make is that our argument does not
24 hinge on tolling. It hinges on some of the other things that I
25 spoke about. But because things were being read into the



1 record, I would like to read the following into the record.
2 And I did allude to the September 15, 2014 scheduling order,
3 which is docket number 12897. And what the Court ordered was,
4 in the first order paragraph.

5 Until further order of the Court, this schedule
6 governing New GM's ignition switch motion to enforce, which is
7 subject to various orders previously entered by the Court,
8 copies of which shall be provide by New GM to plaintiffs upon
9 written request, shall cover the schedule for the pre-closing
10 action motion to enforce.

11 THE COURT: Okay.

12 MR. WEINTRAUB: Our interpretation, our very strong
13 view is that this incorporates the prior order, the prior order
14 embedded in the ordered provisions that the issues of late
15 claims were to be put to the side until the four threshold
16 issues were decided. And I don't think it's credible to say
17 that my clients should have stood up and said, we want to be
18 treated differently than everybody else, we want our issues
19 adjudicated now. And for the reasons I said earlier, Your
20 Honor, until the four threshold issues had been decided, there
21 was no basis to seek a late claim.

22 THE COURT: Okay. Here is, at least, how we're going
23 to proceed in part. There's a hearing in Motors Liquidation on
24 a motion to dismiss that's currently scheduled for February
25 14th, and I'm -- which is a 10, but we're going to have an

